



To: Members of Synod
From: The Ven. Elizabeth J. Hardy
CAO & Secretary of Synod
Date: March 6, 2015
Re: **Proposed Changes to Mandatory Retirement**

A motion was brought to Diocesan Council proposing that the matter of mandatory retirement as it relates to members of the clergy be abolished. Currently, such a policy exists in Canon 10, section 6 and requires clergy to resign at age 70. Thereafter they can be appointed annually to continue their roles.

In order to assist with the discussion of this issue at the Town Hall meetings, set out below is a brief background with respect to the law as it relates to mandatory retirement in Ontario.

The Ontario *Human Rights Code* (“Code”) prohibits mandatory retirement in relation to all employees of the Diocese and of the parishes, whether their employment is professional, technical or clerical.

Section 5(1) of the Code provides:

Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability.

Section 10(1) of the Code provides:

In Part 1 and in this Part, “age” means an age that is 18 years or more.

Section 24(1) of the Code provides:

The right under section 5 to equal treatment with respect to employment is not infringed where,

- (a) A religious, philanthropic, educational, fraternal or social institution or organization that is primarily engaged in serving the interests of persons identified by their race, ancestry, place of origin, colour, ethnic origin, creed, sex, age, marital status or disability employs only, or gives preference in employment to, persons similarly identified if the qualification is a reasonable and bona fide qualification because of the nature of the employment. (emphasis added)

- (b) The discrimination in employment is for reasons of age, sex, record of offences or marital status if the age, sex, record of offences or marital status of the applicant is a reasonable and *bona fide* qualification because of the nature of the employment. (emphasis added)

There is therefore a legal issue as to whether clergy are “employees” of the Diocese such that there can be no mandatory retirement policy in relation to them. The issue is not simple. Historically a distinction has been made in the law between office holders and employees and the terms governing the way office holders are selected and or terminated have not been subject to the Code. An “office” has been described by the courts as a position of a public nature, filled by successive incumbents, whose duties were defined not by agreement but by law or by the rules of the institution. In that context, clergy have historically been treated as office holders not employees.

Recently, there has been a move in the United Kingdom and at some human rights tribunals to re-examine the question of whether clergy are office holders or employees. Canadian courts have not addressed the issue in recent years so there is now some doubt as to what they would conclude if asked to address the issue.

In summary, there is not currently a legal requirement that mandatory retirement be abolished in respect of the clergy but the law may be moving in that direction.

Prepared by:
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